

Records of 9/11 Response Not for Public, City Says

By Jennifer Steinhauer

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The Bloomberg administration has concluded that many of the audio and written records of the Fire Department's actions on Sept. 11 should never be released to the general public.

The administration, in response to a lawsuit filed in State Supreme Court in Manhattan by The New York Times seeking numerous records concerning the terrorist attack on the World Trade Center, has cited a variety of reasons for keeping the records secret. In court papers and interviews, administration officials and city lawyers have argued that a federal court order in Virginia has barred them from releasing much of the material, citing its value in the government's case against Zacarias Moussaoui, who is accused of being the "20th hijacker."

But lawyers for the administration argued that even if the order, issued by the judge overseeing the prosecution of Mr. Moussaoui, were amended or lifted, they would still have no intention of releasing audiotapes of the Fire Department

dispatchers, hundreds of individual accounts of firefighters or transcripts of radio communications from that day.

The administration has argued that releasing these materials would be an invasion of privacy for the families of those who died at the trade center, and for the firefighters who responded to the disaster scene. The administration has said that that because the requested information involves "interagency" communication, it is exempt under the state Freedom of Information Law.

"The records requested by The Times were compiled for law enforcement purposes," according to legal documents filed by Michael A. Cardozo, the city's corporation counsel. He added: "Second, both the oral histories and the radio transmissions, especially the 911 calls, contain highly personal and emotionally charged material. Victims were recorded as they were experiencing life-threatening circumstances, in some instances as they were dying."

Shortly after he was appointed, Mr. Cardozo said that the administration planned to be much more responsive to media requests for documents and records than former Mayor Rudolph W. Giuliani's had been.

In its suit, which was filed in May, The Times rejects each of the city's claims, arguing that much of the material -- some of which has already been provided to reporters by family members and other sources -- reflects information and images that have been viewed by millions of people through news accounts, documentaries and books about Sept. 11.

The Times argues that the Moussaoui order binds only the prosecution and defense, not state and local agencies. The newspaper also argues that Mr. Moussaoui's prosecution would not be compromised with the release of this information, and that the interagency argument is also invalid. "Information about the case permeates the country," wrote David E. McCraw, a lawyer for The Times, in a response to the city's memorandum of law.

Mr. McCraw added in an interview yesterday: "The disclosures would not interfere with law enforcement, they do not reveal intimate personal details that someone should reasonably think should be secret, or constitute formal advice. These are documents that have huge historical and policy value for the city as a whole. They are the accounts of exactly how that operation worked from the ground level. That is precisely the kind of thing F.O.I.L. is designed to make public."

Included in the material that the administration says should never become public are the oral histories given to Fire Department officials by scores of firefighters and chiefs after Sept. 11. Administration officials say that the firefighters and chiefs were promised confidentiality when they gave their accounts, and that to release them would violate that promise and reveal everything from opinions about the city's emergency response to gruesome details of death and damage.

The Times, in its court filings, says the department has failed to prove that any promise of confidentiality was made to firefighters, and that senior Fire Department officials were compiling the accounts to create a historical record.

Last December, in an interview with a reporter about the oral histories, Assistant Chief Salvatore J. Cassano, then the Fire Department's chief of fire operations, said: "What we are trying to do is capture the events of the day through the eyes of the firefighters who were at the scene. It's for historical purposes."

A former senior official in the Fire Department said yesterday that the firefighters were, in fact, never told that their remarks would be kept confidential. "The histories are more than for historical purposes," said the former official, who spoke on the condition of anonymity. "They are of great value to understanding what happened there. I tend to think that people should be able to see them."

The Times obtained roughly 70 of these histories independently, and posted over two dozen of them on its Web site. The histories offer specific and informed insights on what happened that day, candid assessments of both the successes and the many problems that plagued the rescue effort, and insights into how a future attack would be handled.

Mr. Cardozo said of the oral histories: "The fact that they were not intended for law enforcement purposes" does not negate the fact that "they are being used for law enforcement now. This is the principal issue."

For its part, the Police Department initially released some records and materials related to Sept. 11, including tapes of its radio transmissions that day and a map pinpointing the last known locations of officers who died. The records were all released on request, without news agencies being asked to submit applications under the state's freedom of information statute. The Police Department denied a request to review phone calls received by 911 operators that day, citing a section of the law that exempts from disclosure records that were compiled for law enforcement purposes.

As the Moussaoui trial drew closer, police officials cited the concerns of the federal prosecutors in denying access to additional materials. If federal prosecutors were to drop their objection to the disclosure, the department would decide case by case what materials it would be appropriate to make public, said a police spokesman, Michael O'Looney.

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